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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200714-0190]

RIN 0648-BJ60

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region and Reef Fish Resources of the Gulf of Mexico; Possession Limits for Federally-Permitted Charter Vessels and Headboats

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures as described in an abbreviated framework action to the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). This proposed rule would modify the on-board multi-day recreational possession limit regulations for Federal charter vessel and headboat (for-hire) trips in the Gulf of Mexico (Gulf). This proposed

rule would also make an administrative change to the reporting requirement for Gulf's individual fishing quota (IFQ) program during catastrophic conditions. The purposes of this proposed rule are to promote efficiency in the utilization of the reef fish and CMP resources and reduce regulatory discards, and to update the IFQ reporting requirements.

DATES: Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2020-0065," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0065 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rich Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after

the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of the framework action that contain an environmental assessment and a regulatory flexibility analysis (RFA) may be obtained from the Southeast Regional Office website at *<https://www.fisheries.noaa.gov/action/framework-amendment-modify-multi-day-trip-possession-limits-federal-permitted-charter>*.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Gulf Council manage reef fish resources in the Gulf exclusive economic zone (EEZ) under the Reef Fish FMP. The CMP fishery in the Gulf

and Atlantic regions is managed jointly by the Gulf Council and South Atlantic Fishery Management Council (Councils).

The Gulf Council prepared the Reef Fish FMP and the Councils jointly prepared the CMP FMP. NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*).

Background

In Gulf Federal waters, each person aboard a vessel with a Federal Gulf charter vessel/headboat permit for reef fish or CMP species (for-hire permit) that is on a for-hire trip greater than 24 hours in duration is allowed to possess two daily recreational bag limits for species in the Reef Fish FMP and CMP FMP, except for speckled hind, warsaw grouper, and Gulf migratory group cobia (50 CFR 622.38(c) and 50 CFR 622.382(a)(2)). Speckled hind and warsaw grouper have daily recreational bag limits of one fish per vessel per day; therefore, the possession limit is two vessel limits, or two fish per vessel on a trip that exceeds 24 hours (50 CFR 622.38(c)). Gulf migratory group cobia is a limited harvest species under 50 CFR 622.383(b), which specifies that no person may possess more than two cobia per person per day regardless of the duration of a

trip, and this proposed rule would not revise that provision. A trip begins with departure from a dock, berth, beach, seawall, or ramp and terminates with return to a dock, berth, beach, seawall, or ramp (50 CFR 622.2).

Currently, for the reef fish or CMP possession limit to apply, the for-hire vessel must have two licensed captains on board, and every passenger must have a receipt for the fishing trip which verifies the length of the trip (50 CFR 622.38(c) and 50 CFR 622.382(a)(2)). In addition, the possession limit does not apply until after the first 24 hours of the trip (50 CFR 622.11). Therefore, during the first 24 hours of a trip, each person (or vessel in the case of speckled hind and warsaw grouper) may only possess one daily recreational bag limit. No more than two daily bag or vessel limits may be possessed per person (or vessel) for reef fish and CMP species.

The Gulf Council heard public testimony at its June 2019 meeting that some for-hire vessel captains may have misinterpreted the current regulations as allowing the possession of two daily recreational bag limits at any time during a trip that lasts more than 24 hours. Additionally, there was testimony that allowing recreational for-hire fishers the ability to retain the possession limit at any time during a multi-day trip could increase the efficiency

of the trip and reduce regulatory discards. For example, some vessel operators would prefer to target one species at a time in locations in which that species is abundant, fishing until the possession limit for the planned multi-day trip has been retained. After fishers harvest the possession limit, the vessel's operator would attempt to avoid that species for the remainder of the multi-day trip. However, because the current possession limit does not apply until after the first 24 hours of the trip, vessel operators cannot plan a trip in this manner, but must resume fishing for the target species after the first 24-hours if they want to allow fishers to obtain the second daily bag limit.

Management Measure Contained in this Proposed Rule

This proposed rule would modify the requirements to retain the possession limit on-board vessels that have been issued valid Gulf reef fish or CMP for-hire permits. The proposed rule would increase the trip duration threshold to greater than 30 hours, but would allow fishers to retain a second daily bag limit at any time during a trip of at least that duration. The Council determined that since fishers would be allowed to possess the second daily bag limit at any time during the trip, the trip duration should clearly exceed 24 hours. All other requirements to retain

the recreational possession limit would be unchanged through this proposed rule. The for-hire vessel must have two licensed operators aboard, and each passenger must be issued and have in their possession a receipt issued on behalf of the vessel that verifies the length of the trip. The proposed rule would require that the receipt specify the date and time of departure, and clarifies that the entire trip must occur on days when the harvest and possession of the applicable reef fish species are allowed.

Measure Contained in this Proposed Rule not in the Framework Action

In addition to the measure described in the framework action, this proposed rule would revise language related to reporting under the Gulf's individual fishing quota program (IFQ) during catastrophic conditions. The Gulf currently has two IFQ programs, one for commercial harvest of red snapper and one for commercial harvest of groupers and tilefishes. These programs require participants to record information electronically. However, both programs include a provision that allow for the use of some paper-based forms if catastrophic conditions occur (50 CFR 622.21(a)(3)(iii) and 622.22(a)(3)(iii)). This provision states that if the Regional Administrator (RA) determines that catastrophic conditions exist, NMFS will provide each

IFQ dealer in the affected areas the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA.

NMFS initially required the use of sequentially numbered paper forms as a method intended to prevent fraud. However, to date, these forms have not been used and NMFS has determined that maintaining them in this manner is not practical or cost effective. Therefore, NMFS proposes to remove the references to sequentially coded paper forms in both 50 CFR 622.21(a)(3)(iii) and 622.22(a)(3)(iii) that. If catastrophic conditions occur, NMFS will provide the affected IFQ dealers blank forms, which they can complete with the required IFQ transaction information.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the framework amendment, the Reef Fish and CMP FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for purposes of the RFA that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows and differs from the basis provided in the RFA analysis included in the framework action. The analysis included in the framework action concluded that no for-hire fishing vessels would be directly regulated by this rule. However, NMFS subsequently determined that some for-hire fishing businesses would be directly regulated by this rule, and the factual basis for that determination is explained here.

A description of the proposed rule and its purpose are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY** section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, NMFS believes that the proposed requirement for a receipt showing departure date and time involves no new reporting, record keeping, or other compliance burden beyond current practices under the existing rule. Accordingly, the Paperwork Reduction Act

does not apply to this proposed rule. NMFS invites comments on the burden associated with issuing receipts that verify trip length. The objectives of this proposed rule are to promote efficiency in the utilization of the reef fish and CMP resources and decrease regulatory discards.

This proposed rule would increase the minimum trip duration required to retain the possession limit on Federal for-hire vessels in the Gulf from greater than 24 hours to greater than 30 hours, and would also allow the possession limit to be retained anytime during such a trip rather than only after the first 24 hours of the trip. This proposed rule applies to the recreational sector of the Gulf reef fish and CMP fisheries. Recreational fishers fishing for reef fish and CMP species would be directly affected by the proposed rule but are not considered entities under the RFA and thus are not directly regulated by this rule.

This proposed rule is expected to directly regulate certain businesses (vessels) that possess a valid or renewable Federal charter vessel/headboat Gulf reef fish or Federal charter vessel/headboat Gulf CMP permit. As of August 29, 2019, there were 1,274 valid (non-expired) or renewable Federal charter vessel/headboat Gulf reef fish permits and 1,284 valid or renewable Federal charter

vessel/headboat Gulf CMP permits. Most businesses possess both permits.

Only some vessels with these permits would be directly regulated by this proposed rule. Vessels with valid or renewable Federal charter vessel/headboat Gulf reef fish permits that harvest speckled hind or warsaw grouper and take trips longer than 24 hours would be directly regulated by this proposed rule because the bag limits for those species apply to the vessel rather than the fisher. Any vessel with a valid or renewable Federal charter vessel/headboat Gulf reef fish permit may harvest speckled hind or warsaw grouper. Further, captains and crew on for-hire vessels are allowed to retain several reef fish species harvested under the respective bag limits for those species, with some notable exceptions (e.g., greater amberjack, groupers, and red snapper). Similarly, vessels with valid or renewable Federal charter vessel/headboat Gulf CMP permits that take trips longer than 24 hours would also be directly regulated by this proposed rule because captains and crew are allowed to retain king and Spanish mackerel harvested under the respective bag limits for those species.

For federally permitted charter vessels that were active in the for-hire reef fish or CMP fishing industries,

average annual gross revenue is \$88,111 per vessel and economic profit is \$26,053 per vessel in 2018 dollars. For federally permitted headboats that were active in the for-hire reef fish or CMP fishing industries, the average annual gross revenue is \$267,067 per vessel and economic profit is \$77,960 per vessel in 2018 dollars.

The SBA has established size standards for all major industry sectors in the U.S. including for-hire fishing businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$8 million for all its affiliated operations worldwide. In 2017, the maximum annual gross revenue for a single headboat in the Gulf was about \$1.3 million. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels. Thus, it is assumed the maximum annual gross revenue for charter vessels is less than \$1.3 million. Based on this information, all directly regulated businesses are determined, for the purpose of this analysis, to be small entities.

Available data indicate that 32 headboats with valid or renewable Federal charter vessel/headboat Gulf reef fish or CMP permits harvested reef fish or CMP species on at least one trip that lasted longer than 24 hours between 2014 and 2018. An exact estimate of how many charter vessels with valid or renewable Federal charter vessel/headboat Gulf reef fish or CMP permits harvested reef fish or CMP species cannot be determined based on available data, as current data collections do not record the U.S. Coast Guard documentation number or state boat registration number of the vessel. However, available data indicate that at least 47 charter vessels harvested some type of finfish species on at least one trip that lasted longer than 24 hours between 2014 and 2018. Based on the available data, it is assumed that this proposed rule would directly regulate at least 79 businesses in the Gulf for-hire reef fish and CMP industries.

This proposed rule would increase the minimum trip duration required to retain the possession limit on Federal for-hire trips in the Gulf from greater than 24 hours to greater than 30 hours, but would also allow the possession limit to be retained anytime during a trip meeting the minimum trip duration. Increasing the minimum trip duration required to retain the possession limit would affect less

than 0.1 percent of the total for-hire trips in the Gulf, and at least 14 for-hire vessels that are currently known to take trips between 24 and 30 hours long. Some and possibly all of these 14 for-hire vessels are expected to offer longer for-hire trips in order to meet the possession limit minimum trip duration requirement, and this would serve to reduce any negative effects from passengers switching to vessels that already offer for-hire trips longer than 30 hours. Thus, any adverse effects from this provision would be minimal.

Allowing the second daily bag limit to be retained anytime during a trip meeting the minimum trip duration would be expected to benefit directly regulated for-hire vessels. According to public testimony, allowing passengers to possess the second bag limit at the time of chumming or baiting fish at the initial fishing location could increase trip efficiency and potentially reduce discards. In addition, enabling anglers to spend relatively more time fishing and less time in transit between fishing locations is expected to enhance angler satisfaction and potentially increase gross revenues and profit from future for-hire trips longer than 30 hours.

The information provided above supports a determination that this proposed rule would not adversely

affect for-hire entities in the Gulf reef fish or CMP fisheries. Therefore, this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Charter vessels, Coastal migratory pelagics, Fisheries, Fishing, Gulf of Mexico, Headboats, Recreational bag and possession limits.

Dated: July 14, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.21, revise paragraph (a)(1)(iii) to read as follows:

§ 622.21 Individual fishing quota (IFQ) program for Gulf red snapper.

(a) * * *

(1) * * *

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the

duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

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3. In § 622.22, revise paragraph (a)(1)(iii) to read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(1) * * *

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the

catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

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4. In § 622.38, revise paragraph (c) to read as follows:

§ 622.38 Bag and possession limits.

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(c) *Possession limits for vessels with a valid Federal charter vessel/headboat permit for reef fish.* A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 30 hours may possess, at any time during the trip, no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the date and time of departure and length of the trip, and the entire trip occurs on days when the harvest and possession of the applicable reef fish species are allowed.

5. In § 622.382, revise paragraph (a)(2) to read as follows:

§ 622.382 Bag and possession limits.

* * * * *

(a) * * *

(2) *Possession limits.* (i) *Possession limits for vessels with a valid Federal charter vessel/headboat permit for Atlantic coastal migratory pelagic fish.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a

vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(ii) *Possession limits for vessels with a valid Federal charter vessel/headboat permit for Gulf coastal migratory pelagic fish.* A person who is on a trip that spans more than 30 hours may possess, at any time during the trip, no more than two daily bag limits of Gulf king and Spanish mackerel, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the date and time of departure and length of the trip, and the entire trip occurs on days when the harvest and possession of the applicable coastal migratory pelagic species are allowed.

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